WISCONSIN SUPREME COURT CALENDAR
AND CASE SYNOPSES
March 2006

This calendar contains cases that originated in the following counties:

Dane
Grant
Kenosha
La Crosse
Marathon
Polk
Walworth
Waukesha

These cases will be heard in the Wisconsin Supreme Court Hearing Room, 231 East Capitol.

THURSDAY, MARCH 2, 2006

9:30 a.m.	04AP36	Theresa Huml v. Robert W. Vlazny
11:00 a.m.	05AP121	Lina M. Mueller v. McMillian Warner Insurance Company
2:00 p.m.	{04AP2582	Jackson County v. State of Wisconsin Department of Natural Resources
	{05AP545	Jackson County v. State of Wisconsin Department of Natural Resources

TUESDAY, MARCH 14, 2006

9:45 a.m	04AP1793	Shane T. Drinkwater v. American Family Mutual Ins. Co.
10:45 a.m.	04AP2057-D	Office of Lawyer Regulation v. Randy J. Netzer
1:30 p.m.	04AP1252	Julie Mair v. Trollhaugen Ski Resort

TUESDAY, MARCH 21, 2006

9:45 a.m.	03AP2802-CR	State v. David J. Roberson
10:45 a.m.	04AP1877	Gary Richards v. First Union Securities, Inc.
1:30 p.m.	05AP2-NM	Kenosha County Department of Human Services v. Jodie W.

The Supreme Court calendar may change between the time you receive this synopsis and when the cases are heard. It is suggested that you confirm the time and date of any case you are interested in by calling the Clerk of the Supreme Court at 608-266-1880. That office will also have the names of the attorneys who will be arguing the cases.

Radio and TV, and print media wanting to take photographs, must make media requests 72 hours in advance by calling Supreme Court Media Coordinator Rick Blum at 608-271-4321. These summaries are not complete analyses of the many issues that each case presents. They are a service of the Director of State Courts Office/Amanda Todd, Court Information Officer 608-264-6256.

WISCONSIN SUPREME COURT
THURSDAY, MARCH 2, 2006
9:30 a.m.

04AP36 Theresa Huml v. Robert W. Vlazny

This is a certification from the Wisconsin Court of Appeals, District II (headquartered in Waukesha). The Court of Appeals may certify cases that cannot be decided by applying current Wisconsin law. The Wisconsin Supreme Court, as the state's preeminent law-developing court, often accepts such certifications from the Court of Appeals. The case began in Walworth County Circuit Court, Judge John R. Race presiding.

This case began with a car crash caused by a drunk driver. The Wisconsin Supreme Court will decide if the defendant, who is no longer on probation, is still required to pay restitution to the victim in view of the fact that the victim entered into a monetary settlement with the defendant in a separate civil action.

Since 1980, Wisconsin trial courts have been required by law to order restitution as a condition of probation. Restitution is payment by an offender to a victim to compensate for losses suffered as a result of the crime. Victims may also sue defendants in civil court to collect damages, as the victim in this case did.

Here is the background: On June 20, 1993, Robert W. Vlazny, then 22, drove drunk and collided head-on with a vehicle driven by Theresa Huml. The crash left Huml with severe head and facial injuries, permanent disfigurement, and loss of cognitive function. Five months later, Vlazny was convicted of drunk driving.

The court imposed and stayed a two-year prison sentence, placing Vlazny on three years' probation and approving an agreement reached by the parties requiring Vlazny to pay restitution of $140,000 in monthly installments of $425. At the hearing, the court noted that Vlazny would not be able to pay $140,000 at $425 per month over the three-year probation period. The prosecution responded that "[t]here's a civil action that's going to be running parallel to this, and so whatever is paid on this will be set off in the civil action."

In May 1995, Huml filed a civil action against Vlazny and two insurance companies. In December 1996, Vlazny and Huml reached a settlement requiring Vlazny's insurer to pay Huml $548,000 immediately and then to make payments of over the next several decades. In exchange, Huml agreed to "completely release and forever discharge" the defendant and the insurance companies "…from any or all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever … resulting from the accident …."

By December 2002, when Vlazny's probation ended, he had paid Huml approximately $32,000, leaving a balance of approximately $108,000, which the court converted to a civil judgment. Vlazny they sought an order vacating the judgment and reducing his restitution obligation to zero. He argued that the terms of the settlement

agreement discharged him from any obligation under the restitution judgment. The court denied Vlazny's motion and he appealed.

The Court of Appeals, as noted, certified this case to the Supreme Court, which will decide if the victim in this case may still collect restitution from the defendant.

WISCONSIN SUPREME COURT
THURSDAY, MARCH 2, 2006
11 a.m.

05AP121 Lina M. Mueller v. McMillian Warner Insurance Company

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which reversed a judgment of the Marathon County Circuit Court, Judge Vincent K. Howard presiding.

This case began with an accident involving an all-terrain vehicle (ATV). Those in a position to render aid to the victim claimed not to have immediately recognize her injuries. The Supreme Court is expected to clarify the circumstances under which a person who comes to the aid to an injured person at or near the scene of an accident is immune from civil liability under the Good Samaritan law.

Here is the background: On Oct. 25, 2003, Merlin and Stephanie Switlick hosted a party for about 25 business associates and friends at their cabin. Alcohol was made available to those present. Included in the group were the Switlicks' son, Apollo, then 19, and Apollo's girlfriend, Lina Mueller.

That evening, Apollo and Mueller took a ride on a guest's ATV. Neither wore a helmet. On the return trip, Apollo drove under a branch and both he and Mueller hit their heads. At the cabin, Mueller vomited and Apollo's mother, Stephanie, encouraged her to lie down. Stephanie checked on Mueller approximately hourly. At 6 a.m., when Mueller called Stephanie "Mom," Stephanie called for an ambulance. Mueller was taken to the hospital and diagnosed with serious head injuries.

Mueller sued the Switliks, contending that they failed to render emergency aid and that they provided alcohol to an underage person. The circuit court ruled against Mueller, finding that (1) she had no claim against the parents because she was one of the underage people consuming the alcohol that was provided, and (2) Merlin and Stephanie were immune from liability because they had provided traditional first aid to Mueller and therefore were considered Good Samaritans under the law:

> Wis. Stat. § 895.48(1):
> Any person who renders emergency care at the scene of any emergency or accident in good faith shall be immune from civil liability for his or her acts or omissions in rendering such emergency care.

Mueller appealed. The Court of Appeals, focusing on the Good Samaritan claim, saw things differently. The court concluded that covering Mueller with a blanket and checking on her periodically did not constitute "emergency care" under the circumstances and within the meaning of the statute. Therefore, the Switliks were not immune from liability.

Now, the Switliks have come to the Supreme Court, where they argue that the Court of Appeals decision, if allowed to stand, will discourage people from attempting to help accident victims. The Supreme Court will clarify the circumstances under which the

Good Samaritan law applies to provide immunity to those who have contact with an accident victim.

WISCONSIN SUPREME COURT
THURSDAY, MARCH 2, 2006
2 p.m.

04AP2582 & 05AP545 Jackson County v. State Department of Natural Resources

This is a certification from the Wisconsin Court of Appeals, District IV (headquartered in Madison). The Court of Appeals may certify cases that cannot be decided by applying current Wisconsin law. The Wisconsin Supreme Court, as the state's preeminent law-developing court, often accepts such certifications from the Court of Appeals. The case began in Dane County Circuit Court, Judge Robert De Chambeau presiding.

This case involves a dispute over ownership of a now-closed landfill in Black River Falls. The county and a private corporation been engaged in a dispute over this property since 2002, each hoping to avoid liability for potential environmental clean up costs. The Supreme Court is expected to decide if a county may, after taking steps to acquire a tax-delinquent property, rescind its action and return the property to the original owner without the owner's consent.

Here is the background: The Jackson County Sanitary Landfill (JCSL) is a solid waste disposal facility on Route 3 in Black River Falls that reached capacity and stopped accepting waste in June 2000. Two years earlier, in 1998, the owner – a private corporation – had stopped paying property taxes on the property.

In 2002, the Jackson County clerk issued a tax deed on the property. These are issued when a property is purchased at a public sale for non-payment of taxes.

JCSL claims that the tax deed transferred ownership of the landfill – and responsibility for clean up of any future environmental contamination – to the county taxpayers. The county, on the other hand, claims that the transfer did not take place because the clerk had no authority to issue the tax deed. And even if the clerk did have authority to issue the tax deed, the county argues, a September 2003 County Board resolution to rescind the deed had the effect of undoing any transfer of ownership.

The county supports its argument by citing Wis. Stat. § 75.14(1), which authorizes the county clerk to issue a tax deed when property taxes have not been paid but provides that "no deed may be issued under this section until the county board, by resolution, orders issuance of the deed."

JCSL, however, points to caselaw[1] that says a county board need not adopt a resolution on every tax deed as long as the board has passed a resolution granting the county clerk continuing authority to issue these. The Jackson County Board passed such a resolution in 1905, but the County Board argues that this resolution is no longer valid.

The circuit court ruled in favor of JCSL. The county appealed, and the Court of Appeals certified this case to the Supreme Court, noting that it raises a question that has not previously been answered in Wisconsin, and that the outcome may have broad implications for county practices on tax-delinquent properties.

The Supreme Court will decide whether a county has the authority to rescind a tax deed and return a piece of property to the original owner without the owner's consent.

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[1] Hayes v. Adams County, 15 Wis. 2d 574, 113 N.W.2d 407 (1962)

WISCONSIN SUPREME COURT

TUESDAY, MARCH 14, 2006
9:45 a.m.

04AP1793 Shane T. Drinkwater v. American Family Mutual Ins. Co.

This is a certification from the Wisconsin Court of Appeals, District IV (headquartered in Madison). The Court of Appeals may certify cases that cannot be decided by applying current Wisconsin law. The Wisconsin Supreme Court, as the state's preeminent law-developing court, often accepts such certifications from the Court of Appeals. The case began in Grant County Circuit Court, Judge Robert P. VanDeHey presiding.

This case involves a dispute between a man who was injured in an automobile accident and the health maintenance organization (HMO) to which he belonged. The fact that the man is a Wisconsin resident working for, and insured by, an Iowa company, raised 'choice-of-law' and subrogation questions that the Supreme Court will resolve.

Here is the background: Shane Drinkwater lives in Wisconsin. At the time of the automobile accident, he was employed by a Dubuque, Iowa, corporation called United Chemical Laboratories, Inc. (UCL). Drinkwater was a member of UCL's group health plan, Medical Associates Health Maintenance Organization.

Drinkwater was seriously injured in an automobile-motorcycle collision in Grant County. He sued the driver of the automobile, Jason Honshel, as well as the driver's insurer, American Family Insurance Co. Drinkwater and the HMO eventually entered into a settlement that called upon American Family to pay its policy limit of $250,000.

After covering Drinkwater's medical expenses, the HMO filed a subrogation claim seeking $89,000 of the $250,000 as repayment. Drinkwater took the matter to the Grant County Circuit Court, requesting an order that would allow him to keep the $89,000 under Wisconsin's 'made whole' doctrine, a legal doctrine that says an insurance company may not pursue a subrogation claim until the insured has been fully compensated for his/her injuries. The court found that Drinkwater's injuries totaled $424,000 and concluded that he would be permitted to keep the full $250,000.

The HMO appealed, arguing that Iowa law – which does not recognize the 'made whole' doctrine – should govern the case. The Court of Appeals certified this case after determining that it presents a novel question. In the Supreme Court, the HMO argues that it should be allowed to recover the medical expenses because of this clause contained in its contract with Drinkwater's employer:

> The Agreement and all of its terms and provisions shall be governed by and interpreted in accordance with the laws of the State of Iowa.

Drinkwater, on the other hand, argues that the Wisconsin court appropriately applied Wisconsin law and that the fundamental public policy considerations underlying the 'made whole' doctrine cannot be overridden by insurance-policy language.

In a case that has the potential to affect numerous Wisconsin residents who work for employers in neighboring states, the Supreme Court will decide whether Drinkwater will be permitted to keep the full settlement.

WISCONSIN SUPREME COURT

TUESDAY, MARCH 14, 2006
10:45 a.m.

04AP2057-D Office of Lawyer Regulation v. Randy J. Netzer

The Wisconsin Supreme Court is responsible for supervising the practice of law in the state and protecting the public from misconduct by lawyers. Lawyers must follow a code of ethics developed by the Court. When there is an allegation that a lawyer has acted unethically, the Supreme Court's Office of Lawyer Regulation investigates and, if warranted, prosecutes the attorney. A referee – a court-appointed attorney or reserve judge – hears the discipline cases and makes recommendations to the Supreme Court.

This case involves La Crosse Atty. Randy Netzer, who has been licensed to practice in Wisconsin since 1994 but is not currently practicing. The Office of Lawyer Regulation (OLR) alleges that Netzer, in committing a criminal act, violated the code of professional conduct for lawyers by engaging in dishonest behavior.

Here is the background: in the 1990s, Netzer dated three women who ended up seeking harassment restraining orders against him. The case that sparked the ethics complaint that is currently before the Supreme Court involves a fourth woman, D.N.

D.N. met and dated Netzer in 1999. After the relationship ended, D.N. accused Netzer of following her, showing up at her workplace and her home, sending her mail, and calling repeatedly. She secured a harassment injunction against him and he soon violated it. In October 2000, he was charged with seven misdemeanor criminal counts for stalking, five counts of violating a harassment injunction, and one count of harassment. Five months later, a second criminal complaint was filed after Netzer violated his bail by contacting D.N.

In July 2001, Netzer reported to the OLR that he was facing criminal misdemeanor charges. The following month, he entered an Alford plea (a plea that permits a defendant to maintain his/her innocence while conceding that sufficient evidence exists to convict) to one count of stalking and one count of violating a harassment injunction. The other counts were dismissed but read in for sentencing. Netzer was placed on probation for three years.

A member of the OLR District Committee (a local group of lawyers and members of the public appointed to assist in the investigation of complaints against attorneys) conducted an initial review and concluded that the convictions did not merit action against Netzer's law license. The OLR director appealed this conclusion and received permission to file an ethics complaint against Netzer.

Netzer sought to have the complaint dismissed, arguing that the OLR had no jurisdiction because it waited three and a half years after the allegations arose to file the complaint. The Supreme Court denied this, and the case proceeded to a referee, who determined that Netzer had violated the ethics code and should be given – as the OLR had recommended – a private reprimand.

Netzer now is appealing this decision to the Supreme Court, where he renews his argument that the OLR waited too long to file its complaint, and also maintains that his criminal conviction was unjust and that the district committee's report recommending against sanctions should be considered. The Supreme Court will decide what, if any, discipline to impose on Netzer.

WISCONSIN SUPREME COURT
TUESDAY, MARCH 14, 2006
1:30 p.m.

04AP1252 Julie Mair v. Trollhaugen Ski Resort

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed a decision of the Polk County Circuit Court, Judge Molly E. Galewyrick presiding.

This case involves a woman who was injured when she fell in the bathroom of a ski resort. The Supreme Court is expected to decide whether her claim is barred by the statute of repose[2]. A statute of repose limits the time within which an action may be brought based on the date of the act or omission that caused the injury.

Here is the background: On Jan. 23, 2001, Julie Mair was skiing at Trollhaugen Ski Resort, a ski operation built in 1976 and located near the Wisconsin-Minnesota border in Polk County. In the bathroom at Trollhaugen, Mair stepped on a recessed floor drain and fell, breaking the bone in her right thigh. The bathroom had been installed in 1976 and had not been updated since then; an architect later testified that, according to industry standards, the drain should have been level with the floor.

Mair sued Trollhaugen, alleging negligence and violation of the safe place statute,[3] which requires that a place of employment be kept as safe as the nature of the premises reasonably permits. Trollhaugen responded by arguing that Mair's claims were barred by the 10-year statute of repose that applies to claims arising from a design or construction defect. The court granted Trollhaugen's motion for summary judgment, dismissing the case.

Mair conceded that her negligence claim was barred, but appealed based upon the safe place law, which, she pointed out, imposes an ongoing duty to keep a structure safe. The Court of Appeals agreed that the law creates this duty, but ruled against Mair after concluding that she failed to prove that Trollhaugen knew about the problem. In order to prove a safe-place violation, a litigant must show (1) an unsafe condition existed, (2) an unsafe condition caused the injury, and (3) the business had actual or constructive notice of the condition before the injury occurred (meaning that the resort was aware, or should have been aware, that the drain was hazardous).

Now, Mair has come to the Supreme Court, where she argues that the statute of repose does not apply to safe place claims and that the Court of Appeals' ruling will have the effect of allowing building owners to avoid liability merely because the structural defect that caused the injury was built decades earlier. Trollhaugen, on the other hand, maintains that the lower courts got it right: the slope, depth, and location of the floor drain all were determined 30 years ago as part of the original construction and all claims based upon structural defects clearly are barred by the statute of repose.

The Supreme Court will decide whether safe place claims are subject to the 10-year deadline contained in the statute of repose.

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[2] Wis. Stat. § 893.89
[3] Wis. Stat. § 101.11

WISCONSIN SUPREME COURT

TUESDAY, MARCH 21, 2006

9:45 a.m.

03AP2802-CR State v. David J. Roberson

This is a review of a decision of the Wisconsin Court of Appeals, District I (with District IV judges sitting), which affirmed a conviction in Milwaukee County Circuit Court, Judge Elsa C. Lamelas presiding.

This case involves a warrantless search of a private home that resulted in a man's arrest and conviction on drug charges. The Supreme Court will determine whether the conviction will stand.

Here is the background: Shortly after noon on Dec. 1, 2002, police conducting surveillance near the 19th and State Street in Milwaukee saw two men who appeared to be selling drugs. The detectives called in an undercover officer who ultimately bought cocaine from a man later identified as David J. Roberson. The officer radioed the detectives with a description of the car where the drug buy had occurred, and the detectives followed it to a nearby house. After watching Roberson and another man enter the home, three officers knocked on the door. Roberson's mother, Cecilia Roberson, answered. What happened next is disputed.

The officers testified that Cecilia let them in and consented to a search of the home, during which the officers found Roberson in an upstairs bedroom. Cecilia, however, disputed the officers' contention that she had given them permission to search her home. The officers' identification of Roberson was permitted into evidence and convinced the jury to convict. Roberson was sentenced to 60 months' imprisonment.

Roberson filed a post-conviction motion seeking a new trial, which was denied without an evidentiary hearing. He appealed, arguing that the officers' identification of him was the result of an illegal, warrantless search. He argued that his trial attorney had been ineffective for failing to file a suppression motion.

The Court of Appeals initially reversed the circuit court and ordered it to conduct a hearing on the "ineffective counsel" claim. But the State asked the appellate court to reconsider, and that court ultimately withdrew its original opinion in favor of a new one affirming the conviction after concluding that the search may have been illegal, but sufficient untainted evidence existed for an arrest and conviction.

Now in the Supreme Court, Roberson cautions that permitting warrantless entries into private homes is a slippery slope. The State, on the other hand, maintains that the Court of Appeals got it right: this was not a random entry into a home, but rather an entry that followed extensive investigation and surveillance that gave officers a close-up view of Roberson, and facilitated their keeping him in sight as he entered the home. The officers' observations created probable cause to arrest Roberson, the State argues, and the fact that they search the house for him without a warrant does not alter that.

The Supreme Court will examine and clarify the case law governing the suppression of an identification of a suspect in situations where it is alleged that the suspect's identification was obtained, at least in part, from a warrantless home entry.

WISCONSIN SUPREME COURT

TUESDAY, MARCH 21, 2006

10:45 a.m.

04AP1877 Gary Richards v. First Union Securities, Inc.

This is a review of a split decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which reversed a ruling of the Waukesha County Circuit Court, Judge Robert G. Mawdsley presiding.

This case involves a dispute between an investor and the firm that managed his investments. The question before the Supreme Court is whether the plaintiff (Gary Richards) or the defendant (First Union Securities Inc.) bears the burden of proving that legal documents were (or were not) properly delivered to the company.

The delivery of legal documents to a party being sued is called service of process. The law requires a plaintiff, after filing a summons, to serve the defendant with a copy of the summons and complaint within 90 days. In a case such as this one that involves a claim against a corporation, process must be served on an authorized employee – an officer, director, or managing agent of the corporation or the individual apparently in charge of the office of such a person.

In this case, Richards filed an action against First Union to recover investment losses as the result of an alleged violation of the Wisconsin Uniform Securities Law. The day after Richards filed, the process server delivered the court documents to the First Union office in Brookfield. An employee named Kim Wisniewski, who described herself as working in the back office, accepted service. The process server later testified that, "[w]hen serving legal process on a corporate defendant it is always my practice to state the purpose of my appearance and to ask the office personnel to identify and to direct me to the individual authorized to accept service for the company … and to confirm that individual's authority to accept service."

Two months after Richards served First Union, the company contacted him to say that the matter first had to go to arbitration. Richards agreed, but First Union did not follow through, and the court entered a default judgment in Richards' favor. First Union filed a motion to reopen the default judgment, arguing that the legal documents were not properly served because (1)Wisniewski had not been authorized to accept them, (2) Wisniewski's boss, branch manager Ronald McGrath, was not an authorized agent either, and (3) because no "managing agent" worked at the branch, the papers should have been served on the main office in Madison. The circuit court denied the motion.

First Union went to the Court of Appeals, which reversed the lower court. In a split decision, the Court of Appeals held that the default judgment was void because the circuit court did not have jurisdiction because the service was defective.

Now Richards has come to the Supreme Court, where he argues that the Court of Appeals improperly shifted to him the burden of proving that service was sufficient rather than forcing First Union to prove that it was insufficient. He further argues that, if the Court of Appeals opinion is allowed to stand, any defendant against whom a default judgment is entered will be able to vacate that judgment simply by filing affidavits that service was improper.

The Court will determine whether the default judgment was properly reopened.

WISCONSIN SUPREME COURT
TUESDAY, MARCH 21, 2006
1:30 p.m.

05AP2-NM Kenosha County Department of Human Services v. Jodie W.

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Kenosha), which affirmed an order of the Kenosha County Circuit Court, Judge Mary Kay Wagner presiding.

This case involves a mother whose rights to her now five-year-old son were terminated. The Wisconsin Supreme Court is expected to determine whether to order the trial court to reconsider this matter.

Here is the background: In July 2000, Jodie W. gave birth to a son, Max. She cared for Max for the first two years of his life. There was no intervention by social services during this time. Then, in July 2002, Jodie was incarcerated (she was due for release this month) and she arranged for her mother to care for the child.

After providing care for a brief time, the mother contacted social services and said she could not manage it. As a result, Max was placed with a foster family, where he remains. The family wishes to adopt him. Jodie has continued to have regular visits with Max during her incarceration.

In April 2004, Kenosha County filed a petition to terminate Jodie's parental rights on the grounds that she had failed to obtain and maintain a suitable residence for her son. At the court hearing, Jodie asked that the matter be delayed six months and indicated she had reason to hope that she would be approved for supervised release, which she argued would give her an opportunity to show that she could provide a stable home for Max. The trial court concluded that Max could not wait another six months for a permanent home, and further found that Jodie's belief that she might be released was not based on information that had been adequately documented. Jodie then entered a plea of no contest, and, after questioning her extensively to ensure that she understood that the result of the plea could be a termination of her parental rights, the court accepted Jodie's plea.

At a subsequent hearing, the court found that terminating Jodie's rights to Max was in the child's best interest.

Jodie sought to appeal, but her lawyer filed a 'no-merit' report indicating that she did not have a basis for appeal, and the Court of Appeals accepted the report and issued an order that summarily affirmed the trial court.

Now, Jodie has come to the Supreme Court, where she argues that she could not possibly have maintained a suitable residence for her son while she was behind bars. She asks that she be given an opportunity to reopen the case. The County, on the other hand, points out that the termination was appropriate given Jodie's poor choices – mainly drug use – prior to the incarceration, and further maintains that the time for Jodie to fight the termination was in the trial court, where she instead chose to enter a plea of no contest.

The Court will determine whether to grant Jodie's request to reopen this case.